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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/995,097	11/27/2001	Nick (Nicholas Sheppard) Bromer		9382

7590 02/25/2003

Nick (Nicholas Sheppard) Bromer
402 Stackstown Road
Marietta, PA 17547-9311

EXAMINER

ART UNIT PAPER NUMBER

DATE MAILED: 02/25/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

**Notification of Non-Compliance
With 37 CFR 1.192(c)**

Application No.

09/995,097

Applicant(s)

BROMER, NICK (NICHOLAS
SHEPPARD)

Examiner

Gerald B. Klebe

Art Unit

3618

--The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

The Appeal Brief filed on 12/14/02 is defective for failure to comply with one or more provisions of 37 CFR 1.192(c). See MPEP § 1206.

To avoid dismissal of the appeal, applicant must file IN TRIPLICATE a complete new brief in compliance with 37 CFR 1.192 (c) within the longest of any of the following three **TIME PERIODS**: (1) **ONE MONTH or THIRTY DAYS** from the mailing date of this Notification, whichever is longer; (2) **TWO MONTHS** from the date of the notice of appeal; or (3) within the period for reply to the action from which this appeal was taken. **EXTENTIONS OF THESE TIME PERIODS MAY BE GRANTED UNDER 37 CFR 1.136.**

1. ☒ The brief does not contain the items required under 37 CFR 1.192(c), or the items are not under the proper heading or in the proper order.
2. ☒ The brief does not contain a statement of the status of all claims, pending or cancelled, or does not identify the appealed claims (37 CFR 1.192(c)(3)).
3. ☒ At least one amendment has been filed subsequent to the final rejection, and the brief does not contain a statement of the status of each such amendment (37 CFR 1.192(c)(4)).
4. ☐ The brief does not contain a concise explanation of the claimed invention, referring to the specification by page and line number and to the drawing, if any, by reference characters (37 CFR 1.192(c)(5)).
5. ☐ The brief does not contain a concise statement of the issues presented for review (37 CFR 1.192(c)(6)).
6. ☒ A single ground of rejection has been applied to two or more claims in this application, and
 - (a) ☒ the brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.
 - (b) ☐ the brief includes the statement required by 37 CFR 1.192(c) (7) that one or more claims do not stand or fall together, yet does not present arguments in support thereof in the argument section of the brief.
7. ☒ The brief does not present an argument under a separate heading for each issue on appeal (37 CFR 1.192(c)(8)).
8. ☒ The brief does not contain a correct copy of the appealed claims as an appendix thereto (37 CFR 1.192(c)(9)).
9. ☒ Other (including any explanation in support of the above items):

Refer to ATTACHED EXPLANATORY NOTES BY EXAMINER.

M Klebe 25 Feb 2003



UNITED STATES DEPARTMENT OF COMMERCE
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APPLICATION NO./ CONTROL NO.	FILING DATE	FIRST NAMED INVENTOR / PATENT IN REEXAMINATION	ATTORNEY DOCKET NO.
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EXAMINER

ART UNIT	PAPER
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14

DATE MAILED:

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Commissioner of Patents and Trademarks

NOTIFICATION OF NON-COMPLIANCE WITH THE REQUIREMENTS OF 37 CFR 1.192(c)

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**EXPLANATORY NOTES related to NOTIFICATION of NON-COMPLIANCE with
37 CFR 1.192(C)**

Re. Item 1. Brief items required under 37 CFR 1.192(c) are not under the proper heading or in the proper order.

Although the MPEP states that 37 CFR 1.192(c) does not prohibit the inclusion of other material which an appellant may consider necessary or desirable, to be in compliance the brief must contain the nine items identified in the regulation in the order set forth. Appellants Appeal Brief is not in compliant order, since the material headed Authorities is improper at least by being out of permitted order. Moreover, if Appellant desires to relegate the material in an appendix to the brief, the material included must be pertinent and timely to the appeal. The examiner notes that references to the model demonstrated at the interview of May 15, 2002 are not appropriate to the appeal since the model has not been made available and moreover has no bearing on the rejections of the claims that are made in the final Office action and which are at issue in the appeal. Secondly, the inclusion of the paper "Normal and Abnormal function of the Foot" as an attachment to the appeal brief is improper since, (a) presentation of new evidence in an appeal brief is improper on the basis of timeliness, since there is no reason why appellant could not have provided the evidence earlier, possibly as included in a supplemental Information Disclosure Statement; and, (b) the reference lacks sufficient bibliographic source information including lack of a date. Consequently, these materials must be removed from the Appeal Brief

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and any and all references made thereto in the discussion of issues and arguments related must be removed from the brief and an appropriately compliant brief timely filed in triplicate before acceptance and further action on the appeal brief can be taken by the Office.

Re: Item 2. The brief does not contain a proper statement of the states of all claims and does not identify properly the appealed claims.

Claim 1, having been canceled by Appellant in the amendment filed 5/29/2002 under 37 CFR 1.111 is not on appeal.

Claim 3 remains pending in the application and would appear to be on appeal.

Claims 4, 7, and 10, having been withdrawn from consideration, are considered not on appeal.

These distinctions are not made or are not clearly identified by Appellant in this section of the brief as required.

Re: Item 3: At least one amendment has been filed subsequent to the final rejection, but the brief does not contain a proper statement of the status of each amendment.

Appellant's statement of the Status of Amendments is not correct. The After Final amendment filed September 25, 2002 is not entered [emphasis added]. The amendment will be entered upon receipt of a timely filed compliant Appeal Brief.

Re: Item 6: The brief omits the statement required by 37 CFR 1.192(c)(7) that one or more claims do not stand or fall together, yet presents arguments in support thereof in the argument section of the brief.

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The grouping of claims by the Appellant is improper; the Appellant in later sections of the brief devoted to argument of the issues of the rejections of the various claims clearly recognizes certain claims are grouped and stand or fall together, however, in this section fails to address this except to allege that claim 2 must be considered independently of claim 16. In the light of Appellants later grouping of claims for argument of the issues of the rejection, Appellant is required to state the grouping of claims that stand or fall together. Refer to the discussion of this as presented in MPEP 1206, Appeal Brief Content, subpara. (7), "Grouping of Claims".

Re: Item 7: The brief does not present an argument under a separate heading for each issue on appeal.

Appellant's statement under "Issues" is incomplete since it fails to properly identify what claims are rejected under 35 USC 112, 1st paragraph. Furthermore, Appellant's statement of the issues also fails to identify the specific rejections under which the (grouped) claims are rejected.

Re: Item 8: The brief does not contain a correct copy of the appealed claims as an appendix thereto.

Appellant's appendix entitled "Clean Version of Claims" includes claims not under appeal; in particular, Appellant lists claims 4, 7, and 10 which, having been withdrawn from consideration on the basis of Appellants election of species as detailed in the Office action mailed 4/01/2002 (Paper No. 4) are not at issued in the appeal brief.


gbKlebe / Art Unit 3618 / 25 February 2003

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